

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

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U.S. DISTRICT COURT
N.D. OF ALABAMA

SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
v.)
)
VINCENT NICO,)
Defendant.)

RULE 11(f) FACTUAL BASIS FOR GUILTY PLEA

COMES NOW the United States of America through its undersigned counsel, for the purpose of satisfying the requirements of Federal Rule of Criminal Procedure 11(f), and submits the following Factual Basis in support of the guilty plea of **VINCENT NICO**:

1. Defendant VINCENT NICO was employed at HealthSouth since January 1990 and eventually rose to the level of Vice President.
2. HealthSouth was a corporation organized under the laws of the State of Delaware with its headquarters in Birmingham, Alabama. HealthSouth claimed to be the nation's largest provider of outpatient surgery, diagnostic imaging and rehabilitative healthcare services with approximately 1,800 locations in all 50 states, Puerto Rico, the United Kingdom, Australia, and Canada.
2. The "Saudi Foundation" was a private, not for profit organization funded by members of the Saudi Royal Family. In or about 1998, the Saudi Foundation began construction of a 450 bed rehabilitation hospital in Saudi Arabia ("the Saudi Hospital").

3. The "Foundation's Director General" was a Saudi national who exercised administrative control over certain of the Saudi Foundation's administrative activities, including the negotiation and execution of certain contracts.

The Negotiation and Execution of the Saudi Contract

4. In or around January 2000, HealthSouth and the Foundation began negotiating an agreement under which HealthSouth was to provide staffing and management services for the Saudi Hospital. The proposed contract ("the Saudi Contract") called for the Foundation to pay HealthSouth \$10,000,000 annually over a five-year term.

5. The Foundation's Director General acted as the lead negotiator for the Saudi Foundation. A group of HealthSouth officers ("the HealthSouth Officers"), including NICO and several other members of HealthSouth's senior management, negotiated on behalf of HealthSouth.

6. In or around June 2000, the Foundation's Director General requested a "finder's fee" of \$1,000,000 from HealthSouth, ostensibly for his efforts in having brought the Saudi Contract to the attention of HealthSouth. The HealthSouth Officers sought advice from an attorney outside HealthSouth ("the Outside Attorney") concerning the legality of making such a payment. On or about June 12, 2000, the Outside Attorney advised the HealthSouth Officers that payment could only be made with the written approval of the Foundation.

7. The HealthSouth Officers subsequently requested the Outside Attorney's advice about the propriety of paying the Foundation's Director General through a consulting contract with a HealthSouth-affiliated entity. The Outside Attorney advised the HealthSouth Officers, *inter alia*, that any such contract would require the Foundation's Director General to provide real

services in return, that the market value of those services equate to the amount the Foundation's Director General was paid, and that HealthSouth could not make any "backdoor" payment or provide any reimbursement to the affiliated entity to compensate that entity for its execution of a contract with the Foundation's Director General.

8. In or about July 2000, and acting in disregard of advice received from the Outside Attorney, the HealthSouth Officers agreed to pay the Foundation's Director General the sum of \$500,000 per year for five years under a consulting contract with a HealthSouth-affiliated entity.

9. On or about July 17, 2000, one of the HealthSouth Officers signed the Saudi Contract on behalf of HealthSouth. The Foundation's Director General countersigned the Saudi Contract on or about August 12, 2000. The Saudi Contract called for HealthSouth to receive a \$6,000,000 payment from the Saudi Foundation each January, with the remaining \$4,000,000 to be paid at a later point during each of the succeeding five years.

10. NICO caused HealthSouth to advance funds under a bogus consulting contract ("the Australian Consulting Contract") between the Foundation's Director General and a HealthSouth-affiliated entity located in Australia ("the Australian Entity"). Under the Australian Consulting Contract, dated September 25, 2000, the Foundation's Director General would be paid \$500,000 each year for five years, in advance of any services being provided.

11. Over the course of the Australian Consulting Contract, HealthSouth funded the Australian Entity's payments to the Foundation's Director General by wiring funds to Australia after HealthSouth's receipt of the annual \$6,000,000 payment from the Foundation. The Foundation's Director General performed few, if any, services under the Australian Consulting Contract.

The Defendant's Breach of his Duty of Honest Services

12. NICO's status as a HealthSouth employee imposed certain fiduciary obligations upon him. Among those obligations were a duty of loyalty and good faith. The duty of good faith required NICO to act in HealthSouth's best interest, while the duty of loyalty required NICO to avoid self dealing and to protect the property of his employer. In addition, NICO was subject to HealthSouth's Standards of Business Conduct, which prohibited employees from receiving gifts from individuals/entities doing business with HealthSouth..

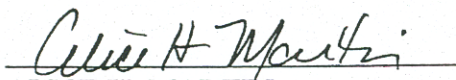
13. The Foundation's Director General agreed to pay NICO \$125,000 of the \$500,000 he received each year under the Australian Consulting Contract. NICO accepted payments of \$125,000 from the Foundation's Director General in 2001, 2002, and 2003. NICO did not seek HealthSouth's approval prior to accepting these funds, nor did he disclose his receipt of these funds to his employer.

14. In or about October 2002, NICO demanded that HealthSouth pay him a bonus ("the Bonus"), based on his claimed efforts in securing and maintaining the Saudi Contract. NICO contended that he was due the Bonus because he had not received performance based compensation for the actions he had taken on HealthSouth's behalf in obtaining and servicing the Saudi Contract. At no time prior to demanding or after receiving the Bonus did NICO disclose to HealthSouth that he had received money from the Foundation's Director General. Based on NICO's false representations and failure to disclose his receipt of payment from the Foundation's Director General, HealthSouth agreed to pay NICO \$900,000, or five percent of the profit the company realized from the Saudi Contract during the first three years of its term. In addition,

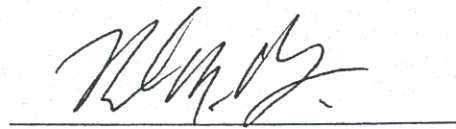
HealthSouth promised to pay NICO five percent of any profit earned on the Saudi Contract for the remainder of its term.

15. In or about January 2003, NICO received \$631,502, after state and federal tax deductions, from HealthSouth as payment of the Bonus.

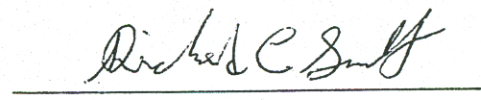
16. On or about January 21, 2003, in furtherance of his scheme to defraud HealthSouth of its right to his honest services, and to obtain money and property, NICO caused the transmission of an interstate wiring, specifically, an electronic mail from Tampa, Florida to HealthSouth headquarters in Birmingham, Alabama.

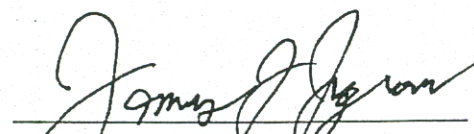

ALICE H. MARTIN
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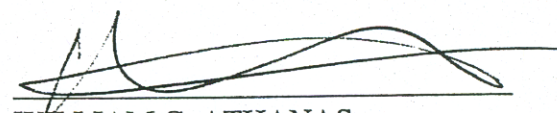
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